

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, November 02, 2016

Hearing Room 301

9:30 AM

1:11-18460 Joel S Blackburn

Chapter 13

#1.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
VS
DEBTOR

fr. 10/5/16

STIP/APO filed 10/28/16

Docket 64

*** VACATED *** REASON: AP Stip filed on 10/28/16 [doc. 71]

Judge:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joel S Blackburn

Represented By
Shawn S White

Movant(s):

Nationstar Mortgage LLC

Represented By
Erica T Loftis

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

9:30 AM

1:16-11728 Artemio Pureco

Chapter 7

#2.00 Motion for relief from stay [PP]

VENTURA COUNTY CREDIT UNION
VS
DEBTOR

Docket 14

Judge:

- NONE LISTED -

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Artemio Pureco

Represented By
Alla Tenina

**United States Bankruptcy Court
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9:30 AM

CONT... Artemio Pureco

Chapter 7

Movant(s):

Ventura County Credit Union

Represented By
Ann G Lee

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, November 02, 2016

Hearing Room 301

9:30 AM

1:16-12600 Edith Cabrera Alvarado

Chapter 7

#3.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Docket 7

Judge:

- NONE LISTED -

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1), (d)(2), and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Movant, or its agents, may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout or loss mitigation agreement. Movant, through its servicing agent, may contact the Debtor by telephone or written correspondence to offer such an agreement. Any such agreement shall be nonrecourse unless stated in a reaffirmation agreement.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

Upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C).

Any other request for relief is denied.

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CONT... Edith Cabrera Alvarado

Chapter 7

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Edith Cabrera Alvarado

Pro Se

Movant(s):

Wells Fargo Bank, N. A.

Represented By
Erica T Loftis

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

9:30 AM

1:16-12570 Sei Jin Chang

Chapter 13

#4.00 Motion for relief from stay [RP]

CHRISTIANA TRUST
VS
DEBTOR

Docket 14

Judge:

- NONE LISTED -

Tentative Ruling:

This case was dismissed on September 19, 2016. Grant relief from stay pursuant to 11 U.S.C. § 362(d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

Any other request for relief is denied.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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9:30 AM

CONT... Sei Jin Chang

Chapter 13

Party Information

Debtor(s):

Sei Jin Chang

Pro Se

Movant(s):

Christiana Trust, a division of

Represented By
Jennifer C Wong
Nancy L Lee

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, November 02, 2016

Hearing Room 301

9:30 AM

1:16-12975 Hilda R Morales De Delgado

Chapter 13

#4.10 Motion in individual case for order imposing a stay or continuing the automatic stay as the Court deems appropriate

Docket 12

Judge:

- NONE LISTED -

Tentative Ruling:

This judge's self-calendaring procedures, which are posted on the Court's website, provide that a motion to continue the stay under 11 U.S.C. § 362(c)(3) may be calendared on shortened time without prior Court approval, *if* the motion is filed with the Court and served on all parties entitled to receive notice of the motion, including any creditor that may be affected and its attorney, if known, **not later than fourteen (14) days prior to the date of the hearing.**

According to the proof of service attached to the motion, debtor filed and served the motion on October 20, 2016, which is only 13 days before the date of the hearing.

In conformance with this Court's self-calendaring procedures, the Court will continue this hearing on the motion to **November 16, 2016 at 9:30 a.m.** On or before **November 14, 2016**, any response to debtor's motion must be filed and served on debtor's counsel by email or fax.

No later than **November 4, 2016**, debtor must provide notice by prepaid United States mail of the continued hearing and the deadline to file and serve a response.

Appearances on November 2, 2016 are excused.

Party Information

Debtor(s):

Hilda R Morales De Delgado

Represented By
William G Cort

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CONT... Hilda R Morales De Delgado

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Hearing Room 301

1:30 PM

1:11-23581 Thomas Henry Majcher

Chapter 7

Adv#: 1:16-01033 GOTTLIEB v. Fulwider Patton LLP

#5.00 Pretrial conference re: complaint for (1) breach of contract, and (2) accounting

fr. 5/18/16; 6/1/16

Docket 1

Judge:

- NONE LISTED -

Tentative Ruling:

In light of the parties' settlement agreement [Bankruptcy Docket, doc. 51], approved by the Court in an order entered on July 27, 2016 [Bankruptcy Docket, doc. 54], do the parties intend to file a Stipulation for Entry of Judgment?

Party Information

Debtor(s):

Thomas Henry Majcher	Pro Se
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Defendant(s):

Fulwider Patton LLP	Pro Se
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Joint Debtor(s):

Maria A. Majcher	Pro Se
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Plaintiff(s):

DAVID K. GOTTLIEB	Represented By Steven Werth
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Trustee(s):

David Keith Gottlieb (TR)	Represented By Elizabeth Jiang
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David Keith Gottlieb (TR)	Pro Se
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CONT... Thomas Henry Majcher

Chapter 7

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
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1:30 PM

1:12-18333 Susan H Tregub

Chapter 7

Adv#: 1:13-01059 TFC Library, LLC et al v. TREGUB

#6.00 Status conference re: complaint to determine
non-dischargeability of debt

fr. 5/8/13; 5/15/13; 11/20/13 (stip); 12/18/13; 2/5/14; 3/5/14;
4/30/14; 8/27/14 stip/order; 9/3/14; 1/14/15; 6/17/15; 11/18/15;
4/13/16; 8/3/16

Docket 1

Judge:

- NONE LISTED -

Tentative Ruling:

In light of the appeal pending in the California Court of Appeal, the Court will continue this status conference to **1:30 p.m. on March 8, 2017**. No later than **February 22, 2017**, the parties must file a status report regarding the appeal proceedings.

Appearances are excused on November 2, 2016.

Party Information

Debtor(s):

Susan H Tregub	Pro Se
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Defendant(s):

SUSAN H TREGUB	Pro Se
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Plaintiff(s):

Mitchell, Silberberg & Knupp, LLP	Represented By Steven Werth
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ZOOPRAXIS, LLC, a California	Represented By
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CONT...

Susan H Tregub

Chapter 7

Steven Werth

Library Rights Company, LTD

Represented By
Steven Werth

TFC Library, LLC

Represented By
Steven Werth

David Bergstein

Represented By
Steven Werth

Trustee(s):

David Seror (TR)

Represented By
Leonard M Shulman
David Seror (TR)

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
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Wednesday, November 02, 2016

Hearing Room 301

1:30 PM

1:13-17080 Randy Jay Ramirez

Chapter 7

Adv#: 1:16-01117 Zamora, Chapter 7 Trustee v. Hernandez, an individual et al

#7.00 Status conference re complaint for declaratory relief, rescission of oral contract, turnover of property of the estate, and for an accounting

Docket 1

Judge:

- NONE LISTED -

Tentative Ruling:

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 12/30/16.

Deadline to complete one day of mediation: 1/16/17.

Deadline to file pretrial motions: 1/31/17.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 2/22/17.

Pretrial: 1:30 p.m. on 3/8/17.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

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CONT...

Randy Jay Ramirez

Chapter 7

Party Information

Debtor(s):

Randy Jay Ramirez

Pro Se

Defendant(s):

Hermilo Hernandez, an individual

Pro Se

Elena Hernandez, an individual

Pro Se

Plaintiff(s):

Nancy Zamora, Chapter 7 Trustee

Represented By
Jessica L Bagdanov

Trustee(s):

Nancy J Zamora (TR)

Represented By
David Seror
Jessica L Bagdanov
Reed Bernet

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Wednesday, November 02, 2016

Hearing Room 301

1:30 PM

1:16-11150 Laura Kay James

Chapter 7

Adv#: 1:16-01097 Kirakosian v. James et al

#8.00 Status conference re: complaint to deny dischargeability of all debts owed to creditor Viktoria Kirakosian pursuant to 11 U.S.C. 523(a)(2)(6)

fr. 9/14/16; 9/21/16

Docket 1

Judge:

- NONE LISTED -

Tentative Ruling:

Have the parties met and conferred in compliance with Local Bankruptcy Rule 7026-1? The parties' unilateral status reports contain conflicting information about whether the parties have complied with this rule.

The defendants' pending motion to dismiss (the "Motion to Dismiss"), filed on October 17, 2016 [doc. 17], is short and appears to be problematic. Consequently, the Court may advance the hearing on the Motion to Dismiss to an earlier date. Can the plaintiff file a response to the Motion to Dismiss in the near future? If so, the Court may advance the date for the hearing on the Motion to Dismiss.

Party Information

Debtor(s):

Laura Kay James	Pro Se
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Defendant(s):

Jake Guillermo James	Pro Se
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Laura Kay James	Pro Se
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Joint Debtor(s):

Jake Guillermo James	Pro Se
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1:30 PM

CONT... Laura Kay James

Chapter 7

Plaintiff(s):

Viktoria Kirakosian

Represented By
Scott D Olsen

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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Hearing Room 301

1:30 PM

1:15-13109 Artashes Yenokyan

Chapter 13

Adv#: 1:15-01241 Bondarev v. Yenokyan

#8.10 Status conference re: first amended complaint to
determine discharge of debt

fr. 1/20/16(stip); 3/16/16; 5/18/16; 6/1/16; 6/15/16; 8/24/16; 10/19/16

Docket 20

Judge:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Artashes Yenokyan

Represented By
Elena Steers

Defendant(s):

Artashes Yenokyan

Pro Se

Plaintiff(s):

Anton Bondarev

Represented By
Sara Eliot

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

Elizabeth (SV) F Rojas (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

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Hearing Room 301

1:30 PM

1:16-10045 Duane Daniel Martin

Chapter 7

Adv#: 1:16-01050 Gottlieb, Chapter 7 Trustee et al v. Martin et al

#8.20 Pretrial conference re: first amended complaint for:
 (A) declaratory relief;
 (B) permanent injunction; and
 (C) damages

fr. 6/8/16; 7/6/16; 10/19/16
STIP filed 10/20/16

Docket 14

***** VACATED *** REASON: Order dismissing case entered 10/25/16**

Judge:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Alan W Forsley

Defendant(s):

Won Hundred, Inc.

Represented By
Gustavo E Bravo

Tisha Michelle Martin

Represented By
Gustavo E Bravo

Duane Daniel Martin

Represented By
Gustavo E Bravo

Joint Debtor(s):

Tisha Michelle Martin

Represented By

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1:30 PM

CONT... Duane Daniel Martin

Chapter 7

Alan W Forsley

Plaintiff(s):

David K Gottlieb, Chapter 7 Trustee

Represented By
Monica Y Kim

XE Visions, Inc.

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

David Keith Gottlieb (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

2:30 PM

1:09-13962 John Obara

Chapter 7

Adv#: 1:09-01239 AFC CAL, LLC v. Obara et al

#9.00 Plaintiff's motion to amend judgment to add nonparty alter egos as judgment debtors

Docket 193

***** VACATED *** REASON: Motion withdrawn 10/24/16**

Judge:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Obara

Represented By
Charles Shamash

Defendant(s):

Myrna Castro

Represented By
Raymond H. Aver

John Obara

Represented By
Raymond H. Aver
Charles Shamash

Joint Debtor(s):

Myrna Castro

Represented By
Charles Shamash

Plaintiff(s):

AFC CAL, LLC

Represented By
Tom Roddy Normandin
Nichole M Wong

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CONT... John Obara

Chapter 7

Trustee(s):

Diane Weil (TR)

Pro Se

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2:30 PM

1:14-13695 GACN Inc

Chapter 11

Adv#: 1:15-01135 GACN Inc v. Certain Underwriters at Lloyd's, Syndicates 2

#10.00 Status conference re: complaint for declaratory relief

fr. 10/14/15; 11/18/15; 12/16/15; 5/11/16; 8/10/16; 10/19/16(stip)

Stip to continue filed 10/19/16

Docket 1

***** VACATED *** REASON: Order entered 10/20/16 continuing hearing
to 11/23/16 at 2:30 p.m.**

Judge:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

GACN Inc

Represented By
Johnny White
Simon Aron
Elsa M Horowitz
Gregory G Rizio
Michael L Cohen

Defendant(s):

Certain Underwriters at Lloyd's,

Pro Se

Plaintiff(s):

GACN Inc

Represented By
Simon Aron
Johnny White

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CONT... GACN Inc

Chapter 11

US Trustee(s):

United States Trustee (SV)

Pro Se

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2:30 PM

1:16-11199 Enrique Flores, Jr.

Chapter 7

Adv#: 1:16-01101 Matsudaira v. Flores, Jr.

#11.00 Defendant's motion to dismiss for failure to state a claim pursuant to F.R.C.P. Rule 12(b)(6) and F.R.B.P. Rule 7012

Docket 4

Judge:

- NONE LISTED -

Tentative Ruling:

The defendant's reply [doc. 9] raises issues that were not discussed in the motion to dismiss, such as claim preclusion and additional facts about the Deed of Trust for the purchase of the real property at issue. The Court intends to continue this hearing to **2:30 p.m. on November 23, 2016**, to allow the plaintiff to brief these issues.

The plaintiff must file a supplemental brief no later than **November 16, 2016**. In the brief, the plaintiff should discuss whether: (1) the extent to which, if any, claim preclusion bars litigation of the complaint; (2) issue preclusion limits the damages to \$10,345, based on the state court's judgment; and (3) the effect of title to the subject property being held in the name of LTV Driven, Inc., a corporation.

Party Information

Debtor(s):

Enrique Flores Jr.

Represented By
R Grace Rodriguez

Defendant(s):

Enrique Flores Jr.

Represented By
Lesley Davis

Plaintiff(s):

Judith Matsudaira

Represented By
Barry E Cohen

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CONT... Enrique Flores, Jr.

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:16-11199 Enrique Flores, Jr.

Chapter 7

Adv#: 1:16-01101 Matsudaira v. Flores, Jr.

#12.00 Status conference re: complaint to determine dischargeability
of debt pursuant to section 523(a)(4) & 523(a)(2)(a)

fr. 9/14/16

Docket 1

Judge:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Enrique Flores Jr.

Represented By
R Grace Rodriguez

Defendant(s):

Enrique Flores Jr.

Pro Se

Plaintiff(s):

Judith Matsudaira

Represented By
Barry E Cohen

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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Hearing Room 301

2:30 PM

1:11-11603 Kevan Harry Gilman

Chapter 7

Adv#: 1:11-01389 Phillips et al v. Gilman

#13.00 Trial re: complaint for judgment
on debt; to determine non-dischargeability of debts;
and objection to discharge
[RULING]

fr. 5/7/14; 7/23/14; 8/26/14; 9/23/14; 11/5/14; 11/10/14 order;
12/10/14; 7/22/15; 7/8/15; 8/26/15; 9/18/15; 10/2/15; 10/7/15; 11/24/15;
12/15/15; 1/13/16; 3/9/16; 3/23/16, 4/6/16; 6/29/16; 8/12/16; 10/19/16

Docket 1

Judge:

The Court will deny the defendant's discharge pursuant to 11 U.S.C. § 727(a)(2)(B).

I. BACKGROUND

On February 7, 2011, Kevan Harry Gilman ("Defendant") filed a voluntary chapter 7 petition. [FN1]. This was Defendant's second bankruptcy filing, having filed a previous case in 1995.

On May 13, 2011, creditors Tammy R. Phillips and Tammy R. Phillips, a Prof. Law Corp. ("Plaintiffs"), filed a complaint against Defendant, initiating this adversary proceeding. In their supplemental complaint [doc. 283], Plaintiffs alleged that Defendant should not receive a discharge pursuant to 11 U.S.C. § 727(a)(2)(B) because, after the petition date, Defendant transferred, destroyed, mutilated, or concealed property of the estate with intent to hinder, delay, or defraud a creditor or an officer of the estate.

Defendant admits to the postpetition withdrawal of funds from accounts which were property of the estate. Defendant also admits he never scheduled one of the accounts from which he withdrew money. As such, the only remaining issue is whether Defendant possessed the requisite "intent to hinder, delay, or defraud a creditor or an

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CONT... Kevan Harry Gilman

Chapter 7

officer of the estate." 11 U.S.C. § 727(a)(2)(B).

A. Defendant's Background

The Court has extensively discussed Defendant's background in a prior decision. *In re Gilman*, 544 B.R. 184 (Bankr. C.D. Cal. 2016). Defendant "has been a licensed and practicing attorney for over 30 years." *Id.*, at 187. Aside from practicing as an attorney, from 1997 until approximately 2011, Defendant operated a business which would pay medical service providers to treat plaintiffs in personal injury or worker's compensation lawsuits and then place a lien on the proceeds of the lawsuits. *Id.*

In addition, beginning in 2009, Defendant was a partner at Triumvirate Associates, through which Defendant worked to connect companies with venture capital firms for a commission. *Id.* Defendant continued to perform this job postpetition, eventually transitioning to a company called Venture-Net Partners. *Id.*, at 187-88.

As noted in the Court's prior decision, Defendant "has never taken inactive status with the California State Bar." *Id.*, at 188. In fact, as of September 2013, Defendant testified he was representing multiple clients. *Id.*

B. The Accounts and Withdrawals Therefrom

On February 21, 2011, Defendant filed his first set of schedules and statements [Bankruptcy Docket, doc. 12]. In his schedule B, next to item no. 12, which requests information about a debtor's interests in IRA, ERISA, Keogh, or other pension or profit sharing plans, Defendant indicated he did not have **any** interests in such accounts. On June 21, 2011, the chapter 7 trustee filed a no asset report.

Months after the chapter 7 trustee filed the no asset report, Defendant filed amended schedules B and C [Bankruptcy Docket, doc. 35]. Next to item no. 12 in his schedule B, Defendant added two accounts: "Debtor's IRA," which Defendant valued at \$16,000, and "Retirement-SEP," valued at \$42,000 (together, the "Accounts"). In his schedule C, Defendant claimed exemptions to the entire amounts in the Accounts.

According to Defendant's bankruptcy attorney, Shirlee L. Bliss, before Defendant

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CONT...

Kevan Harry Gilman

Chapter 7

filed his original schedules, he informed Ms. Bliss about the Accounts. However, Ms. Bliss testified that her staff inadvertently omitted the Accounts from Defendant's original schedules.

Defendant admits that he made the following post-petition withdrawals from the Accounts:

DATE OF WITHDRAWAL	AMOUNT OF WITHDRAWAL
May-June 2012	\$6,400
September 13, 2012	\$14,000
April-May 2013	\$6,600
July 22, 2013	\$2,400
August 29, 2013	\$4,500
October 10, 2013	\$2,675
January 16, 2014	\$2,160
February 20, 2014	\$2,500
April 30, 2014	\$1,700

On April 24, 2014, Defendant withdrew \$79.43 from a third account which Defendant never identified in his schedules (the "Undisclosed Account"). Defendant testified that he dissipated the withdrawn funds from the Accounts and the Undisclosed Account.

To date, Defendant has not amended his schedules to include the Undisclosed Account. As such, Defendant never claimed an exemption in the Undisclosed

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C. Plaintiffs' Objection to Defendant's Claim of Exemption

On September 2, 2011, Plaintiffs filed an objection to, among other things, Defendant's amendment of his schedules to claim an exemption in the Accounts (the "September 2011 Objection") [Bankruptcy Docket, doc. 39]. Plaintiffs asserted that Defendant should be barred from amending his schedules based on bad faith. [FN2]. In the September 2011 Objection, Plaintiffs stated:

Even assuming a competent claim of exemption has been made and duly served, the mere fact a debtor *claims* an exemption does not mean the debtor is *entitled* to the exemption claimed. *See In re Wolfberg*, 255 B.R. 879, 883 (9th Cir. BAP 2000); *In re Andermahr*, 30 B.R. 532, 534 (9th Cir. BAP 1983) ("the right to amend [to claim an exemption] is not the same as the right to the exemption"). For example, debtors may be statutorily ineligible for *the exemptions* they claim or for the *amounts* claimed.

...

Other law may apply to divest what would otherwise be a good claim to an exemption.

September 2011 Objection, p. 6 (emphases in original). Mostly based on Defendant's alleged concealment of the Accounts, Plaintiffs requested that Defendant's claims of exemption in the Accounts be denied: "The exemptions must be disallowed and the property added to the estate for the benefit of all creditors." *Id.*

Plaintiffs served the September 2011 Objection on Defendant at his home address, as well as on Defendant's counsel. Defendant filed a written opposition to the September 2011 Objection, including his supporting declaration [Bankruptcy Docket, doc. 43]. In his declaration, Defendant stated that he had timely disclosed the Accounts to his bankruptcy counsel in her client intake form and that counsel had

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mistakenly omitted the Accounts from his original schedules.

On August 7, 2012, the Court issued a ruling on the September 2011 Objection (the "Objection Ruling") [*Judge's Ruling on 8/7/12*, Bankruptcy Docket, doc. 83]. In the Objection Ruling, the Court ruled that Defendant could amend his schedules to claim an exemption in the Accounts. However, the Court provided time for Plaintiffs to conduct discovery on whether Defendant's claim of an exemption in the Accounts was undeserved. [*Order on Conduct of Discovery Regarding Exemption Claims*, Bankruptcy Docket, doc. 100]. As stated in the Court's written ruling:

Allowing Debtor's amendment claiming an exemption is different from allowing the exemption itself. *See In re Michael*, 163 F.3d 526, 529 (9th Cir. 1998). IRAs and pension plans are exempted pursuant to Calif. C.C.P. §§ 703.140(b)(10)(E) and 704.115 if "reasonably necessary for the debtor's support." Phillips believes the accounts do not qualify for an exemption and seeks a continuance to allow Phillips to conduct additional discovery. The Court will grant the continuance and set the IRA and SEP account exemption determination for further hearing.

Objection Ruling, p. 6.

D. The Parties' Discovery Disputes

On October 11, 2011, Defendant completed his verified responses to Plaintiffs' request for production. Exhibit 69. Defendant provided the following responses:

REQUEST NO. 15:

Produce all documents relating to your alleged SEP-IRA.

RESPONSE TO REQUEST NO. 15:

Responding party objects to this request on the grounds that it seeks documents and information protected from disclosure by right to

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financial privacy. (*See Johnson by Johnson v. Thompson*, 971 F.2d 1487, 1497 (10th Cir. 1992); *DeMasi v. Weiss*, 669 F.2d 114, 119-20 (3rd Cir. 1982)).

Additionally, the request is overbroad with regard to time.

Additionally, the request is not relevant to the claim or defense of any party, as framed by the pleadings in this case. (*See FRCP 26(b)(1)*).

Also, the Request is vague, ambiguous and/or unintelligible.

REQUEST NO. 16:

Produce all documents relating to your alleged non-SEP individual retirement account.

RESPONSE TO REQUEST NO. 16:

Responding party objects to this request on the grounds that it seeks documents and information protected from disclosure by right to financial privacy. (*See Johnson by Johnson v. Thompson*, 971 F.2d 1487, 1497 (10th Cir. 1992); *DeMasi v. Weiss*, 669 F.2d 114, 119-20 (3rd Cir. 1982)).

Additionally, the request is overbroad with regard to time.

Additionally, the request is not relevant to the claim or defense of any party, as framed by the pleadings in this case. (*See FRCP 26(b)(1)*).

Also, the Request is vague, ambiguous and/or unintelligible.

Id. On December 13, 2011, Defendant provided an amended set of responses to Plaintiffs' request, again asserting the same objections. *Id.* On February 21, 2012, Defendant provided a second amended set of responses, again refusing to provide the documents and asserting the same objections. *Id.*

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On January 30, 2012, Plaintiffs filed a motion to compel production of documents (the "First Motion to Compel") [doc. 85]. Plaintiffs served the First Motion to Compel on Defendant directly, as well as on Defendant's counsel [doc. 86].

On December 4, 2012, Plaintiffs filed a motion for terminating sanctions, based in part on Defendant's failure to respond adequately to discovery related to the Accounts [Bankruptcy Docket, doc. 87]. In a supplement to the motion for terminating sanctions (the "January 2013 Supplement"), filed on January 22, 2013 and served directly on Defendant [Bankruptcy Docket, doc. 96], Plaintiffs again set forth their basis for objecting to Defendant's claim of exemption in the Accounts:

[L]abeling something as an "individual retirement account" or SEP-IRA does not establish qualification for the California exemption. SEP-IRAs are IRAs for employees of an employer. The debtor may not have complied with IRS rules governing IRAs and other facts may show an IRA was not designed and used for retirement purposes. *Cf. In re Rucker*, 570 F.3d 1155 (9th Cir. 2009); *In re Daniel*, 771 F.2d 1352, 1357-58 (9th Cir. 1985); *In re Barnes*, 275 B.R. 889, 896 (Bankr. E.D. Cal. 2002).

January 2013 Supplement, p. 2. The January 2013 Supplement also alleged that Defendant was not cooperating with requests for discovery, including by objecting to requests for production of documents. January 2013 Supplement, pp. 3-4.

On April 15, 2013, Plaintiffs filed a motion to compel Defendant to produce documents and respond to interrogatories (the "Second Motion to Compel") [Bankruptcy Docket, doc. 102]. The requests for production attached to the Second Motion to Compel included the following requests from Plaintiffs and responses from Defendant (emphases in original):

REQUEST FOR PRODUCTION NO. 1

Produce each and every document relating to the **creation** of the item you list as "**Debtor's IRA**" in your amended schedule C filed August

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RESPONSE TO REQUEST FOR PRODUCTION NO. 1

Objections. This question is overbroad and burdensome, calls for expert testimony and opinion. Responding party did not prepare this document and does not know what was relied upon by the prepare [sic].

REQUEST FOR PRODUCTION NO. 2

Produce each and every document relating to post-2005 **deposits** into the item you list as "**Debtor's IRA**" in your amended Schedule C filed August 4, 2011 (including without limitation IRA account statements, cancelled checks, and bank statements for any individual or entity).

RESPONSE TO REQUEST FOR PRODUCTION NO. 2

Objections. This question is overbroad and burdensome, calls for expert testimony and opinion. Responding party did not prepare this document and does not know what was relied upon by the prepare [sic]. Without waiving such objections, Debtor will produce these documents.

REQUEST FOR PRODUCTION NO. 3

Produce each and every document showing post-2003 **withdrawals** from the item you list as "**Debtor's IRA**" in your amended Schedule C filed August 4, 2011.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3

Objections. This question is overbroad and burdensome.

REQUEST FOR PRODUCTION NO. 4

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Produce each and every **account statement** issued between March 1, 2007 and April 1, 2011 for the item you list as "**Debtor's IRA**" in your amended Schedule C filed August 4, 2011.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4

Objection. This question is overbroad and burdensome. Without waiving such objection, Debtor is making a diligent attempt to locate such documents and will produce such documents.

REQUEST FOR PRODUCTION NO. 5

Produce each and every document relating to the **creation** of the item you list as "**Retirement-SEP**" in your amended Schedule C filed August 4, 2011.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5

Objection. This question is overbroad and burdensome. Without waiving such objection, Debtor is making a diligent attempt to locate such documents and will produce such documents.

REQUEST FOR PRODUCTION NO. 6

Produce each and every statement relating to post-2005 **deposits** into the item you list as "**Retirement-SEP**" in your amended Schedule C filed August 4, 2011, including without limitation IRA account statements, cancelled checks, and bank statements for any individual or entity.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6

Objection. This request is overbroad and burdensome. This question is not relevant and is not calculated to lead to relevant and/or admissible evidence.

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REQUEST FOR PRODUCTION NO. 7

Produce each and every document showing post-2003 **withdrawals** from the item you list as "**Retirement-SEP**" in your amended Schedule C filed August 4, 2011.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7

Objection. This request is overbroad and burdensome. This question is not relevant and is not calculated to lead to relevant and/or admissible evidence.

REQUEST FOR PRODUCTION NO. 8

Produce each and every **account statement** issued between March 1, 2007 and April 1, 2011 for the item you list as "**Retirement-SEP**" in your amended Schedule C filed August 4, 2011.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8

Objection. This request is overbroad and burdensome. This question is not relevant and is not calculated to lead to relevant and/or admissible evidence.

In the Second Motion to Compel, Plaintiffs asserted that Defendant did not produce any of the documents he stated he would produce. Plaintiffs served the Second Motion to Compel on Defendant at his home address, as well as on Defendant's counsel.

On May 14, 2013, Ms. Bliss filed a declaration opposing Plaintiffs' request for sanctions against Ms. Bliss in the Motion to Compel [Bankruptcy Docket, doc. 112]. In her declaration, Ms. Bliss stated:

3. On March 7, 2013 after conference with Mr. Jakob, I emailed my client and informed him of the additional documents that needed to be produced. The

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following day my client emailed me and told me that his brother was in the hospital awaiting a heart transplant. I have not been able to get documents from the client and he seems very unfocused and distraught.

4. I emailed the client thereafter on March 25, March 28, April 27, April 28 and several times in May 2013. Unfortunately, I believe the extensive discovery done by Mr. Jakob in the adversary action and the health problems of my client combined with the stress of the heart transplant of my client's brother has left the client unable to adequately respond. I cannot respond if my client is unable to assist me.

Declaration of Shirlee L. Bliss, Bankruptcy Docket, doc. 112, ¶¶ 3-4.

On June 11, 2013, the Court entered an order granting the Second Motion to Compel [Bankruptcy Docket, doc. 123]. The Court stated:

The requests were proper. Moreover, because Debtor did not serve timely responses to the discovery requests, Debtor waived any objections. Sanctions are awarded to Creditors in the amount of \$4,140. Debtor and his counsel Shirlee Bliss are jointly and severally liable for this amount, which shall be paid within one month. Supplemental responses to discovery requests and the production of responsive documents shall be made within one month. Debtor is admonished that failure to comply fully with this order may result in terminating sanctions, e.g., the Court will sustain Creditors' objections to Debtor's enhanced homestead exemption based on disability and Debtor's claimed exemptions in IRAs without holding an evidentiary hearing on those objections.

Order on Second Motion to Compel, p. 2.

Defendant continued to resist Plaintiffs' discovery requests. On June 14, 2013 and June 29, 2013, Plaintiffs filed additional motions to compel [Bankruptcy Docket, docs. 125, 133], based in part on Defendant's failure to provide the requested

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information about the Accounts. Plaintiffs served both motions on Defendant as well as his attorneys. The Court granted both motions to compel and sanctioned Defendant for his failure to respond adequately to discovery [Bankruptcy Docket, docs. 181, 182].

Plaintiffs also filed a motion for terminating sanctions, also based in part on Defendant's failure to comply with discovery related to the Accounts [Bankruptcy Docket, doc. 154]. This motion was also directly mailed to Defendant. Defendant signed and filed a declaration in opposition to this motion [Bankruptcy Docket, doc. 164], stating that the requested documents related to the Accounts "were not in [his] possession" but that "[e]ventually, [he] learned that [he] could obtain copies of many of the documents online, which [he] did." Declaration of Kevan Harry Gilman, doc. 164, ¶ 4.

Around this time, Defendant again amended his schedules B and C [Bankruptcy Docket, doc. 173]. Defendant now described the Accounts as "Debtor's SEP-IRA" and "Retirement-SEP-Profit Sharing." In his second amended schedule C, Defendant again claimed an exemption in the Accounts.

On June 21, 2013, Plaintiffs, through a set of interrogatories, requested that Defendant "[i]dentify by account source, tax year, amount, and use all uses to which [Defendant] put funds withdrawn from individual retirement accounts." Exhibit 60. On August 18, 2013, Defendant provided the following verified response: "SEP IRA, July 2013, \$2,400. The funds were used for food, gasoline, utilities, household maintenance, health care, prescriptions, and car maintenance/repair. No exact itemization of use of how much money was used for each of these categories was maintained." *Id.*

On September 16, 2013, Plaintiffs took Defendant's deposition. At the deposition, Defendant admitted to withdrawing money from one of the Accounts, stating that he "needed money to live on." 9/16/13 Deposition of Kevan Harry Gilman, 27:2-5. Plaintiffs asked Defendant if he had consulted an attorney before withdrawing these funds. Defendant responded that "I did not retain an attorney for that purpose. I don't believe I asked any attorneys either." *Id.*, 27:21-24. After this admission, the following exchange took place between the parties:

Plaintiffs: And you are aware, aren't you, that the validity of the exemption was being questioned?

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Defendant: Not until very recently.

Plaintiffs: Well, weren't you served with objections to claimed amended exemptions?

Defendant: I don't recall.

Plaintiffs: And did you file any declarations opposing the objections to claimed exemptions?

Defendant: I don't recall.

Id., 27:25-28:8.

From September 3, 2013 through September 26, 2013, Plaintiffs sent a series of letters to Defendant's counsel, Ms. Bliss, regarding the Accounts. Exhibit 62. In relevant part, the letters stated:

A. From a September 4, 2013 letter from Plaintiffs' counsel to Ms. Bliss:

"During the March 7th conference I specifically explained that any retirement plan is governed by plan documents, agreements and the like. You were required to respond further and produce such documents and never did. The document requests sought documents showing post-2003 withdrawals. You were required to respond further and produce and never did. The document requests also requested documents relating to post-2005 deposits. You were required to respond and never did.

...

Request 24 required Debtor to produce every piece of documentation provided to his counsel to claim an exemption in a SEP-IRA or other IRA. All objections were waived. There was no response or production."

B. From a September 10, 2013 letter from Plaintiffs' counsel to Ms. Bliss:

"It is your duty to be specific on schedules. You scheduled the existence of a 'SEP.' 'SEP' is a term of art recognized by the IRS for a type of IRA.... A 'SEP,' however, is not the same thing as a 'qualified retirement plan.'"

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C. From a September 11, 2013 letter from Plaintiffs' counsel to Ms. Bliss:

"You state 'as you have copies of the statements...you are well aware of what each account is.' Do you not understand the issue? It is only upon seeing the account statements—that should have been provided long ago—that I have become aware you have misrepresented the accounts and Creditors may need additional discovery time to assure a decision on the merits. Now your letter is stating 'Debtor's IRA' is a SEP-IRA and the 'SEP' is a 'profit sharing' plan. **You had a duty to say so in the schedules.**" [emphasis in original].

D. From a September 20, 2013 letter from Plaintiffs' counsel to Ms. Bliss:

"Referring to certain accounts he claims are exempt, your client defiantly asserted the funds that are or were in those accounts are or were 'his.' He is incorrect. Creditors gave notice two years ago that they objected to your client's 'amended exemptions.' Unless and until the claimed exemptions are allowed the funds remain property of the estate. He needs to restore every single penny he took *immediately*. Please inform me by the end of next week that such action has taken place." [emphasis in original].

E. From a September 24, 2013 letter from Plaintiffs' counsel to Ms. Bliss:

"Not only do the facts raise extreme concerns about moral hazard, but you have informed us—albeit not properly—that Debtor has destroyed evidence central to Creditor's [sic] case against Debtor's claimed exemptions in retirement-related accounts. Requests 1 and 5 sought the production of documents creating the investment vehicles now being identified as a 'SEP-IRA' and 'profit sharing plan.' Debtor never obeyed a court order to serve a supplemental response to those requests. Nor has Debtor produced the requested documents.

...

If Debtor has destroyed the plans or agreements, Debtor has seriously

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interfered with Creditors' ability to show the plans did not conform to law, were not followed in actual operation, etc."

F. From a September 26, 2013 letter from Plaintiffs' counsel to Ms. Bliss:

Creditors' interrogatory 18...asked Debtor to 'identify by account source, tax year, amount and use all uses to which [Debtor] put funds withdrawn from individual retirement accounts.'

...

The response to the interrogatory indicates Debtor withdrew \$ 2400 from the supposed e*Trade SEP IRA in July 2013. Debtor does not answer the interrogatory to explain his actions with respect to the Navisis account.

Id. (emphases in original).

E. The Supplemental Complaint

On September 27, 2013, Plaintiffs filed a motion to file a supplemental complaint (the "Motion to Supplement") [doc. 270], to which Plaintiffs attached the proposed supplemental complaint. Plaintiffs included a claim that the provisions of 11 U.S.C. § 727(a)(2) preclude Defendant from receiving a discharge. The proposed supplemental complaint included the following allegations concerning Plaintiffs' § 727(a)(2) claim:

87. On August 4, 2011, after the trustee concluded the meeting of creditors, Defendant scheduled certain funds and claimed them to be exempt. Plaintiffs-Creditors objected to the exemption claims. Despite knowledge of the objection and that the claimed exemptions had not been allowed, Defendant thereafter removed some or all of the funds from the estate and transferred some or all of the funds to himself, whereupon he dissipated them through subsequent transfers.

88. Defendant admitted in his deposition that he had not acted under advice of counsel. In fact, it appears he initially concealed his actions from his bankruptcy counsel. On several occasions from around March 2013 to July 2013 Defendant's bankruptcy counsel complained she should not be sanctioned because Defendant had not provided

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documents to her despite her requests.

89. Ultimately, on or before August 16, 2013, Defendant's bankruptcy counsel became aware that Defendant had taken funds out of the accounts.

Motion to Supplement, Exhibit 1. Plaintiffs served the Motion to Supplement on Defendant at his home address, as well as on Defendant's attorneys for the bankruptcy case and this adversary proceeding. Defendant filed an opposition to the Motion to Supplement [doc. 274]. In the opposition, Defendant asserted Plaintiffs' proposed supplemental claims should not be allowed because they ran afoul of the Court's scheduling order, Defendant would be prejudiced from the filing and the allegations in the proposed supplemental complaint were already being addressed in the main bankruptcy case.

On November 5, 2013, the Court overruled Defendant's objections and held that Plaintiffs could supplement their complaint with the additional allegations [doc. 285]. Plaintiffs filed their supplemental complaint (the "Supplemental Complaint") [doc. 283]. On December 3, 2013, Defendant filed an answer to the Supplemental Complaint, asserting an advice of counsel defense [doc. 289].

F. Continued Discovery Disputes

The parties continued to dispute the adequacy of Defendant's responses to Plaintiffs' discovery requests regarding the Accounts. From October through December 2013, Plaintiffs filed several documents requesting sanctions based on Defendant's alleged failure to provide sufficient responses to Plaintiffs' requests [Bankruptcy Docket, docs. 191, 192, 197, 205, 206, 207]. Plaintiffs served all of Plaintiffs' filings on Defendant directly, as well as on Defendant's bankruptcy counsel.

On February 10, 2014, the Court heard Plaintiffs' discovery motions. Defendant was present at the hearing. At the hearing, the Court required Defendant to conduct an inquiry into the history of deposits into and withdrawals from the Accounts. Plaintiffs' Pretrial Statement, doc. 571, ¶ 66. [FN3]. Subsequently, on March 9, 2014, Defendant filed supplemental responses to discovery (the "Supplemental Responses") [Bankruptcy Docket, doc. 228]. The Supplemental Responses included several responses about the location of documents pertaining to the Accounts. At the end of

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the Supplemental Responses, Defendant provided a verification, which stated:

I have read the foregoing "SUPPLEMENTAL RESPONSES TO DISCOVERY PURSUANT TO INSTRUCTIONS ISSUED BY JUDGE KAUFMAN ON FEBRUARY 10, 2014" and know its contents. I am a party to this action. The matters stated in the foregoing document are true of my own knowledge or belief and I believe them to be true. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Supplemental Responses, p. 19. Defendant signed the verification and dated it March 8, 2014.

G. The Court's Denial of Defendant's Claim of Exemption in the Accounts

On October 15, 2014, Plaintiffs filed a motion for summary judgment (the "MSJ") [Bankruptcy Docket, doc. 257], asking the Court to sustain their objection to Defendant's claim of exemption in the Accounts. On January 7, 2015, the Court held a hearing on the MSJ and issued a ruling sustaining the September 2011 Objection [Bankruptcy Docket, doc. 316]. On January 28, 2015, the Court entered an order granting the MSJ and denying Defendant's claim of an exemption in the Accounts [Bankruptcy Docket, doc. 322].

H. Trial in the Adversary Proceeding

On February 25, 2016, Plaintiffs filed a unilateral pretrial statement ("Plaintiffs' Pretrial Statement") [doc. 571]. On April 7, 2016, the Court entered an order setting forth trial dates, deadlines and guidelines and treating as admitted paragraphs 44, 50, 52, 55, 59, 66, 67, 70 and 82 of Plaintiffs' Pretrial Statement [doc. 588]. The Court trifurcated the adversary proceeding such that the scheduled trial would solely concern Plaintiffs' 11 U.S.C. § 727(a)(2)(B) claim. On June 28, June 29 and August 12, 2016, the Court held trial on Plaintiffs' § 727(a)(2)(B) claim.

At trial, Defendant testified that he believed he could withdraw money from the Accounts because, on June 21, 2011, the chapter 7 trustee filed a no asset report (on June 21, 2011). However, as of that time, Defendant had not disclosed, nor claimed an exemption in, the Accounts.

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Defendant asserts he relied on Ms. Bliss, who never informed him that he should not withdraw funds from the Accounts. Defendant also testified that Ms. Bliss advised him that he did not need to schedule his interest in the Undisclosed Account because the amount in the Undisclosed Account was below a certain threshold.

Ms. Bliss confirmed that she did not advise Defendant to refrain from using the funds in the Accounts. On the other hand, Ms. Bliss also testified that, before he withdrew those funds, Defendant never asked Ms. Bliss if he had a right to do so. Ms. Bliss did not provide any testimony about the Undisclosed Account.

II. LEGAL STANDARDS

Section 727(a)(2)(B) provides that a court shall grant a debtor a discharge unless "the debtor, with intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property ... has transferred, removed, destroyed, mutilated, or concealed ... property of the estate, after the date of the filing of the petition." The objector to discharge bears the burden to prove by a preponderance of the evidence that the debtor's discharge should be denied under an enumerated ground of § 727(a). *In re Khalil*, 379 B.R. 163, 172 (B.A.P. 9th Cir. 2007), *aff'd*, 578 F.3d 1167 (9th Cir. 2009).

"Two elements comprise an objection to discharge under § 727(a)(2)(A): 1) a disposition of property, such as transfer or concealment, and 2) a subjective intent on the debtor's part to hinder, delay or defraud a creditor..." *In re Beauchamp*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999).

Intent may be inferred from the actions of the debtor. *In re Devers*, 759 F.2d 751, 753–54 (9th Cir. 1985). The necessary intent under § 727(a)(2) "may be established by circumstantial evidence, or by inferences drawn from a course of conduct." *Id.*; *see also In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir.1986). "A debtor's intent need not be fraudulent to meet the requirements of § 727(a)(2). Because the language of the statute is in the disjunctive it is sufficient if the debtor's intent is to hinder or delay a creditor." *In re Retz*, 606 F.3d 1189, 1200 (9th Cir. 2010).

"The verb 'delay' is '[t]he act of postponing or slowing.'" *In re Dorsey*, 476 B.R. 261,

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268 (Bankr. C.D. Cal. 2012) (quoting *Black's Law Dictionary* (9th ed. 2009)). "[T]o 'hinder' is 'to slow or make difficult;' 'to hold back;' or 'to impede, delay, or prevent.'" *In re Lira*, 2015 WL 4641600, at *7 (B.A.P. 9th Cir. Aug. 4, 2015) (quoting *Black's Law Dictionary* (10th ed. 2014)).

"Generally, a debtor who acts in reliance on the advice of his attorney lacks the intent required to deny him a discharge of his debts." *Adeeb*, 787 F.2d at 1343. "However, the debtor's reliance must be in good faith." *Id.* "The advice of counsel is not a defense when the erroneous information should have been evident to the debtor." *Retz*, 606 F.3d at 1199; *see also In re Tully*, 818 F.2d 106, 111 (1st Cir. 1987) ("A debtor cannot, merely by playing ostrich and burying his head deeply enough in the sand, disclaim all responsibility for statements which he has made under oath.").

III. ANALYSIS

Defendant admits to the withdrawals from the Accounts and the Undisclosed Account. Defendant also admits that he never scheduled his interest in the Undisclosed Account. As such, the issue before the Court is whether Defendant withdrew the funds and did not schedule the Undisclosed Account "with intent to hinder, delay or defraud a creditor or an officer of the estate." 11 U.S.C. § 727(a)(2) (B). Based on the following, the Court finds that Defendant withdrew the funds and refrained from scheduling the Undisclosed Account with the intent to hinder and delay creditors of the estate.

First, Defendant was aware of the September 2011 Objection. Defendant was served with the September 2011 Objection and almost all subsequent related filings at his home address [Bankruptcy Docket, doc. 39]. The Court finds that Defendant's testimony from his September 16, 2013 deposition that he did not learn about the September 2011 Objection until around September 2013 is not credible. In September 2011, Defendant filed his declaration defending his right to amend his schedules in order to disclose and claim exemptions in the Accounts [Bankruptcy Docket, doc. 43].

Defendant was repeatedly informed of the concept that claiming an exemption does not amount to entitlement to the exemption. The September 2011 Objection stated

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that "the mere fact that a debtor *claims* an exemption does not mean the debtor is *entitled* to the exemption claimed." September 2011 Objection, p. 6. The September 2011 Objection cited authority supporting this position. Plaintiffs served the September 2011 Objection on Defendant prior to *any* of the withdrawals at issue here; Debtor's first improper withdrawal occurred in May 2012.

Moreover, on August 7, 2012, the Court issued the Objection Ruling [Bankruptcy Docket, doc. 83]. In the Objection Ruling, the Court explained that "[a]llowing Debtor's amendment claiming an exemption is different from allowing the exemption itself." Objection Ruling, p. 6. Although Defendant withdrew \$6,400 from the Accounts between May and June 2012, the Objection Ruling was issued prior to Defendant's subsequent withdrawals made from September 2012 through April 2014.

On January 22, 2013, Plaintiffs again reminded Defendant that "labeling something as an 'individual retirement account' or SEP-IRA does not establish qualification for the California exemption." January 2013 Supplement, p. 2. Plaintiffs served the January 2013 Supplement directly on Defendant, again prior to many of Defendant's withdrawals.

In addition, on September 27, 2013, Plaintiffs filed the Motion to Supplement and attached the Supplemental Complaint [doc. 270]. In the Supplemental Complaint, Plaintiffs alleged that Defendant's discharge should be denied because of Defendant's removal of estate funds from the Accounts. Plaintiffs served the Motion to Supplement directly on Defendant. On October 16, 2013, Defendant filed a written opposition to the Motion to Supplement [doc. 274]. After the Court authorized the filing of the Supplemental Complaint [doc. 285], on December 3, 2013, Defendant filed an answer to the Supplemental Complaint asserting an advice of counsel defense and alleging he acted in good faith reliance on his attorneys [doc. 289]. In light of the Court's ruling and the related pleadings, the Court finds that Defendant knew that he should no longer be withdrawing funds from the Accounts and that withdrawal of the funds from the Accounts could result in denial of his discharge. Nevertheless, Defendant continued to withdraw funds through April 2014.

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Defendant's testimony that he relied on counsel similarly lacks credibility. Defendant is an experienced attorney and has practiced law for over 30 years. During his deposition on September 16, 2013, Defendant testified that he did not consult an attorney before withdrawing the funds from the Accounts. 9/16/13 Deposition of Kevan Harry Gilman, 27:21-24. Even if Ms. Bliss was silent about whether Defendant could withdraw funds from the Accounts, Defendant was directly served with the September 2011 Objection and several subsequent filings alerting Defendant that claiming an exemption was not equivalent to being entitled to an exemption.

As to the Undisclosed Account, Defendant testified that Ms. Bliss advised him that he did not need to schedule the Undisclosed Account because it did not contain sufficient funds. However, in schedule B, in which Defendant listed his interest in the Accounts, Defendant also listed his interest in a vehicle, valuing it at \$0, and listed a bicycle, for which he provided a value of \$50 [Bankruptcy Docket, doc. 35]. The values provided for each of these disclosed assets were less than the funds contained in the Undisclosed Account, i.e., \$79.43. It is not credible that Defendant would have scheduled these items of little or no value (in Defendant's view), yet thought it appropriate not to disclose the Undisclosed Account. Moreover, Defendant never claimed an exemption in the Undisclosed Account. As a result, never having scheduled nor claimed an exemption in the Undisclosed Account, and in light of the pending objection to his claims of exemption in other alleged retirement accounts, Defendant cannot in good faith assert he believed he could withdraw funds from the Undisclosed Account.

Furthermore, Defendant continuously resisted discovery related to the Accounts and the Undisclosed Account. From October 11, 2011 through February 21, 2012, Defendant objected to Plaintiffs' requests for production of documents related to the Accounts. Exhibit 69. As a result, Plaintiffs had to file several motions to compel and motions for sanctions [Bankruptcy Docket, docs. 85, 87, 96, 102]. Defendant's refusal to cooperate resulted in Ms. Bliss filing a declaration asserting that she had attempted to obtain responses from Defendant but had not been able to do so [Bankruptcy Docket, doc. 112].

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Subsequently, the Court ruled that Defendant did not adequately respond to Plaintiffs' discovery requests and ordered that Defendant supplement his responses within one month [Bankruptcy Docket, doc. 123]. The Court also sanctioned Defendant.

Defendant did not comply with the Court's order. In June 2013, Plaintiffs filed another two motions to compel [Bankruptcy Docket, docs. 125, 133], both of which were granted by the Court [Bankruptcy Docket, docs. 181, 182]. Defendant was again sanctioned for his conduct.

Despite being sanctioned, Defendant continued to provide inadequate discovery responses. Plaintiffs' interrogatory requested that Defendant set forth all uses to which Defendant put the funds withdrawn from the Accounts. In August 2013, Defendant responded by discussing a single withdrawal of \$2,400. Exhibit 60. From May 2012 through May 2013, Defendant had made several other withdrawals, which he did not discuss.

From 2011 until 2013, Defendant persistently refused to cooperate with discovery and resisted furnishing account statements to Plaintiffs. From September through December 2013, Plaintiffs sent several letters to Ms. Bliss about Defendant's disputed claim to an exemption in the Accounts and filed several motions to compel, all served directly on Defendant.

Defendant cannot feign ignorance on the basis that Plaintiffs filed and served many pleadings. Defendant was well aware of the dispute over his exemption claim for the Accounts. Defendant filed declarations regarding discovery concerning that exemption claim. Moreover, for the February 2014 hearing regarding the discovery dispute concerning that exemption claim, Defendant appeared in person.

Based on the above, Defendant's alleged reliance on counsel was not in good faith and does not negate Defendant's intent to hinder and delay creditors. The Court concludes that Defendant was aware of the impropriety of withdrawing funds from the Accounts and the Undisclosed Account and continued to do so despite this knowledge.

Defendant made the withdrawals from the Accounts and did not schedule the

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Undisclosed Account with the intent to hinder and delay Plaintiffs. Defendant's knowledge that his actions were improper and his persistent refusal to furnish discovery despite several warnings and sanctions from the Court establishes that Defendant's actions were meant to hinder and delay creditors of his estate. Consequently, Plaintiffs having met their burden of proof, in accordance with 11 U.S.C. § 727(a)(2)(B), the Court will deny Defendant's discharge.

IV. CONCLUSION

The Court will deny Defendant his discharge pursuant to 11 U.S.C. § 727(a)(2)(B).

Plaintiffs must submit a proposed judgment within seven (7) days.

FOOTNOTES

1. The Court may take judicial notice of the bankruptcy and adversary proceeding dockets. Unless this decision references a document from these dockets or an exhibit, the facts are derived from testimony provided at trial.
2. The September 2011 Objection included additional arguments regarding Defendant's claim of a homestead exemption and a claim of exemption in his corporate accounts receivable. These objections are not at issue here.
3. Defendant admitted to paragraph 66 of Plaintiffs' pretrial statement. Pretrial Order, doc. 588.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kevan Harry Gilman

Represented By
Shirlee L Bliss

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Defendant(s):

Kevan Harry Gilman

Represented By
Shirlee L Bliss
Mark E Ellis
Brandon L Reeves

Mediator(s):

Steven H Felderstein

Pro Se

Other Professional(s):

Brandon L Reeves

Pro Se

Plaintiff(s):

Tammy R Phillips A Prof Law Corp

Represented By
Charles Q Jakob

Tammy R Phillips

Represented By
Charles Q Jakob

Trustee(s):

Amy L Goldman (TR)

Pro Se

Amy L Goldman (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se